IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 161 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

SURAT TEXTILE MARKET CO. OP. SHOPS & WAREHOUSES SOCIETY LTD

Appearance:

1. INCOME TAX REFERENCE No. 161 of 1992
MR MANISH R BHATT for Petitioner No. 1
MR JP SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 15/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for our opinion in respect of assessment year 1984-85 :-

"(1) Whether on the facts and in the circumstances of the case, Tribunal was right in law in coming to the conclusion that the activity of the assessee co-operative society was business activity ?

(2) Whether on the facts and in the circumstances of the case, Tribunal was right in law in holding that the income of the Co.Op. Society should be taxed under the heard "Business Income" and not under the heads "income from House property" or "income from other sources"?

2. We have heard Mr MR Bhatt, learned standing counsel for the revenue and Mr JP Shah, learned counsel for the respondent-assessee.

3. Our attention is invited to the decision dated 27.3.2003 of another Division Bench of this Court in Income-tax Reference No. 83 of 1989 and connected references wherein, in case of this very assessee, the same questions were raised. After hearing the learned counsel for the parties, this Court answered the questions in the affirmative i.e. in favour of the assessee and against the revenue. Particularly, answer to question No. 1 herein was as under :-

Answer to the first part of the question would be in the affirmative in favour of the assessee and against the revenue.

Answer to the second part of the question would be as under :-

"The income of the assessee would be "business income", except the income derived by way of rent from the residential hotel and revolving restaurant. The income derived by way of rent from residential hotel and revolving restaurant would be income from house property."

4. We accordingly answer both the questions referred to us as under :-

The answer is in the affirmative i.e. in favour of the assessee and against the revenue; the activity of the assessee co-operative society was business activity except in respect of running the revolving restaurant and the hotel and that the income derived from the said two activities would be taxable under the head "income from house property" and the other income would be taxable under the head "business income".

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-